IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 121 OF 2004

1. Smt. Rosa Avelina Antoneita Fernandes e Rebello, widow of Shri Jose Francisco Rebello of major age, already expired on 14.5.2002 i.e. before passing of the decree, represented herein by her legal representatives viz. appellants no.2 to 9 herein below and Ors. ... Appellants.

Versus

1. Shri Thomas Aquinas Beenet Paes alias Benny Paes, of major age, and Ors. ... Respondents.

Mr. Sudesh Usgaokar with Ms. Priyanka Kamat, advocates for the appellants.

Mrs. A. A . Agni, advocate for the respondents.

CORAM : R. M. LODHA, J.

DATE : 18th August, 2005.

P.C.

Heard Mr. Sudesh Usgaokar, learned counsel for the appellants and perused the Judgments of the First Appellate Court as well as the trial Court.

2. The learned counsel for the appellants submitted that the

Appeal Court was not justified in holding that the appellants who have come in possession under the agreement of sale are estopped from raising the plea of adverse possession. He would also contend that the suit for recovery of possession was barred by time under Section 65 of the Limitation Act, 1963.

3. The submissions do not have any substance. The Appeal Court in paragraph 25 of the impugned judgment considered the aforesaid aspect thus:-

> "25. The next limb of arguments of the defendants is that the trial Court did not consider the aspect of adverse possession as contemplated under Article 65 of Indian Limitation Act as recovery of possession holding title gets barred on completion of 12 years from the date of adversity of possession. In fact stand taken by the defendants in the suit on one hand that they are owners of the suit property upon an agreement of sale and upon receipt of total price paid to Bonifacio Paes, predecessor in title of the plaintiffs and at the same time plea of adverse possession is mutually destructive. Adverse possession has to have the characteristics of adequacy, continuity, exclusiveness and in extent so as to show that it

is adverse to true owner. The onus to establish these characteristics is on the adverse possessor. Possession is never considered adverse if it is referable to lawful title. The defendants who claim having come into possession in the year 1955 or 1956 in pursuance of payment of total price in a permissible character cannot be heard to contend that their possession was adverse. If the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse. In the case of agreement for sale (as alleged by the defendants herein) who obtain possession, acknowledges the title of the vendor even though the agreement of sale may be invalid. It is the acknowledgement and recognition of the title of the vendor which excludes the theory of adverse possession. Therefore, the defendants who allege that they came into possession under the agreement of

> sale are estopped from raising plea of adverse possession. In other words adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse as adverse possession is always an unilateral act. Hence, on this count alone, case of the defendants seeking plea of adverse possession is bound to fail."

I do not find anything wrong in the reasoning of the Appeal Court. No substantial question of law arises.

4. The Second Appeal is dismissed in limine.

R. M. LODHA, J.

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